

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2013-027VW
APPLICATION NO. 2011-097C/2013-024C

FAIRFIELD MANOR, LTD.,

FHFC File No. 2013-027VW

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-48.004(14)(g)
FOR A CHANGE IN DEVELOPMENT TYPE**

Petitioner, FAIRFIELD MANOR, LTD., a Florida limited partnership ("Petitioner"), hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION (the "Corporation") for a waiver of the Corporation's prohibition on changes in the "Development Type" of a development. *See* Rule 67-48.004(14)(g), F.A.C.

In support of its petition, the Petitioner states:

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

Fairfield Manor, Ltd.
c/o Paces Foundation, Inc.
2730 Cumberland Boulevard SE
Smyrna, GA 30080
Attn: Mark du Mas
Telephone: 770-431-9696
Facsimile: 770-431-9699
Email: mark@pacesfoundation.org

2. The contact person, along with contact information and relationship, for the Petitioner's Application - Housing Credit (HC) Program (the "Application") is:

Fairfield Manor, Ltd.
c/o Paces Foundation, Inc.
2730 Cumberland Boulevard SE
Smyrna, GA 30080
Attn: Rick Haymond
Telephone: 706-464-2649
Facsimile: 770-431-9699
Email: rickhaymond@gmail.com
(relationship: Development Associate)

3. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

David F. Leon, L.L.C.
Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, FL 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: dleon@broadandcassel.com

4. The Petitioner timely submitted its Application in the 2011 cycle (Application #2011-097C/2013-024C) for the development named "Fairfield Manor" (the "Development").

5. Equity raised from Housing Credits will be used for the development of Fairfield Manor, a new 92-unit apartment development intended to serve low-income elderly individuals in Escambia County, Florida.

6. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner, (b) could deprive Escambia County of essential affordable housing units in a timely manner, and (c) would violate the principles of fairness. Section 120.542(2), Florida Statutes (2012).

7. The waiver being sought is permanent in nature.

THE RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from Rule 67-48.004(14)(g), Florida Administrative Code (2011) (the "Rule"). Specifically, Petitioner is seeking a waiver from the "Development Type" designation identified by Petitioner in its original housing credit application.

Rule 67-48-004(14) provides, in relevant part, as follows:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items and the Application at the time of the Application Deadline, shall result in rejection of the Application without opportunity to submit additional information. Any attempt to make changes to these items will not be accepted. Those items are as follows: ...

(g) Development Type

STATUTES IMPLEMENTED BY THE RULES

9. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HC Program. *See* Section 420.5099, Florida Statutes (the "Statute").

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

10. Petitioner requests a waiver from Rule 67-48.004(14)(g), Florida Administrative Code (2011). Petitioner seeks a waiver from the Rule allowing it to change the Development Type listed in the Application from "3-story with Elevator" to "Mid-Rise with Elevator (a building comprised of 4 stories)".

11. Petitioner is requesting a change in Development Type in order to construct a 4-story building, that will include two (2) elevators, rather than a 3-story building. By constructing an additional story/floor, Petitioner will be able to increase the amount of open and green space and add a pool for its residents. Furthermore, the additional story will allow Petitioner to reduce

the amount of impervious surface, which will serve to reduce run off and further support its LEED certification. Four stories also reduce the number of linear feet of corridors which reduce the travel distance for the residents from their respective units to the elevators and the trash room.

12. The Application's scoring and funding would not have been affected had the Applicant listed "Mid-Rise with 2 Elevators (a building comprised of 4 stories and 2 elevators)" in the Application.

13. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. Petitioner needs to change the Development Type to allow for the construction of four (4) stories as the current 3-story design does not allow Petitioner to provide certain amenities including a pool and other appurtenances to its residents, including much needed open and green space. Furthermore, if Petitioner is not permitted to construct four stories, the Development will have more impervious surface areas and will be subject to increased run off, thereby having a greater impact on the environment, which in turn impacts the Development's LEED Certification. Lastly, if Petitioner is not able to construct the additional story, the residents will have a greater distance to travel for ingress and egress of their unit vis-a-vis each elevator which will ultimately be less efficient for the elderly residents. This Development will provide much needed low income elderly housing to Escambia County. Time is of the essence for the successful completion of this Development. Unless the Petitioner's request is granted, strict application of the Rule would violate principles of fairness. Moreover, unless the Rule is waived to allow the requested change, Petitioner may not be

entitled to receive a final allocation of Housing Credits, thereby resulting in substantial hardship to Petitioner.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

14. Petitioner believes that a waiver of the Rule will serve the purpose of the Statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, *et seq.*) was passed in order to encourage private and public investment in persons of low income. The purpose of the creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to change its Development Type, as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

ACTION REQUESTED

16. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(14)(g), Chapter 67-48.

WHEREFORE, Petitioner respectfully requests the following:

- A. Grant the Petition and all relief requested herein;
- B. Waive Rule 67-48.004(14)(g), Florida Administrative Code (2011), allowing it to change the Development Type listed in the Application from “3-story with Elevator” to “Mid-Rise with Elevator (a building comprised of 4 stories)” which will also include two (2) elevators; and

C. Grant such further relief as may be deemed appropriate.

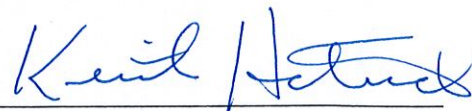
Respectfully submitted,

A handwritten signature in blue ink that reads "Keith Hetrick". The signature is written in a cursive style and is positioned above a horizontal line.

Keith Hetrick, Esq.
Fla. Bar No. 564168
David Leon, Esq.
Fla. Bar No. 53929
BROAD AND CASSEL
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Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: dleon@broadandcassel.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The Petition is being served by hand-delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 Bronough Street, Suite 5000, Tallahassee, FL 32301, with copies served by hand-delivery to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 3299-1400, this 29 day of August, 2013.



Keith Hetrick, Esq.
Fla. Bar No. 564168



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August 29, 2013

VIA COURIER

Ms. Ashley Black
Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

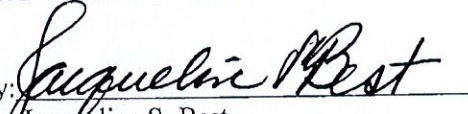
Re: **Fairfield Manor, Ltd.**
Petition for Rule Waiver
Application No. 2011-097C/2013-024C

Dear Ms. Black:

Enclosed for filing is a Petition for Rule Waiver, submitted on behalf of Fairfield Manor, Ltd. for consideration by the Board at its next meeting. A duplicate copy has been delivered to the Joint Administrative Procedures Committee.

If you should you have any questions, please contact me.

BROAD AND CASSEL

By: 
Jacqueline S. Best

Enclosure

cc: Mr. Rick Haymond (rickhaymond@gmail.com)
Ms. Candice Allbaugh (Candice.Allbaugh@floridahousing.org)
Mr. Jade Grubbs (jade.grubbs@floridahousing.org)
Ms. Amy Garmon (amy.garmon@floridahousing.org)
(via email without enclosure)

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